Supreme Court of the United States.

WILLIAM WARD ET AL. *v.* FRANCIS L. SMITH.

The fact that an instrument is made payable at a bank does not make the bank an agent of payee to receive payment, unless he actually deposits the instrument there, or in some express manner authorizes the bank to act for him.

When an instrument is lodged with a bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in the legal currency of the country, or in bills which pass as money at their par value by the common consent of the community.

The doctrine that bank bills are a good tender unless objected to at the time, only applies to current bills which are redeemed at the counter of the bank, and pass at par value in business transactions in the place where offered.

Payment of a check in the bills of a suspended bank, not known to the parties to be suspended, is not a satisfaction.

Where the debtor and the creditor's known agent to receive the money, reside in the same jurisdiction, the fact that the creditor is a citizen of a power at war with the debtor's government, and resident in the hostile state, does not absolve the debtor from his obligation to pay, and if he does not, he is liable for interest.

IN error to the Circuit Court of the United States for the District of Maryland.

In August 1860, the plaintiff in error, William Ward, purchased of Smith certain property in Virginia, and gave him for the consideration-money the three joint and several bonds of himself and co-defendant, upon which the present action was brought. These bonds, each for a sum exceeding four thousand dollars, bear date of the 22d of that month, payable, with interest, in six, twelve, and eighteen months after date, "at the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria."

In February 1861 the first bond was deposited at the bank designated for collection. At the time there was endorsed upon it a credit of over five hundred dollars; and it was admitted that subsequently the further sum of twenty-five hundred dollars was received by Smith, and that the amount of certain taxes on the estate purchased, paid by Ward, was to be deducted.

In May 1861, Smith left Alexandria, and remained within the Confederate military lines during the continuance of the civil war. He took with him the other two bonds, which were never deposited at the Farmers' Bank for collection. Whilst he was thus absent from Alexandria, Ward deposited with the bank to his credit, at different times between June 1861 and April 1862, various sums

in notes of different banks of Virginia, the nominal amount of which exceeded by several thousand dollars the balance due on the first bond. These notes were at a discount at the times they were deposited, varying from eleven to twenty-three per cent. The cashier of the bank endorsed the several sums thus received as credits on the first bond; but he testifies that he made the endorsement without the knowledge or request of the plaintiff. It was not until June 1865 that the plaintiff Smith was informed of the deposits to his credit, and he at once refused to sanction the transaction and accept the deposits, and gave notice to the cashier of the bank and the defendants of his refusal. The cashier thereupon erased the endorsements made by him on the bond.

The defendants (plaintiffs in error) claimed that they were entitled to have the amounts thus deposited and endorsed credited to them on the bonds, and allowed as a set-off to the demand of the plaintiff. They made this claim upon these grounds: That by the provision in the bonds, making them payable at the Farmers' Bank, in Alexandria, the parties contracted that the bonds should be deposited there for collection either before or at maturity; that the bank was thereby constituted—whether the instruments were or were not deposited with it—the agent of the plaintiff for their collection; and that as such agent it could receive in payment equally with gold and silver the notes of any banks, whether circulating at par or below par, and discharge the obligors.

A. G. Browne and *F. W. Brune*, for plaintiffs in error.

R. J. & J. L. Brent, for defendants in error.

FIELD, J. [after reciting the facts].—It is undoubtedly true that the designation of the place of payment in the bonds imported a stipulation that their holder should have them at the bank when due to receive payment, and that the obligors would produce there the funds to pay them. It was inserted for the mutual convenience of the parties. And it is the general usage in such cases for the holder of the instrument to lodge it with the bank for collection, and the party bound for its payment can call there and take it up. If the instrument be not there lodged, and the obligor is there at its maturity with the necessary funds to pay it, he so far satisfies the contract that he cannot be made responsible for any

future damages, either as costs of suit or interest, for delay. When the instrument is lodged with the bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in the legal currency of the country, or in bills which pass as money at their par value by the common consent of the community. In the case at bar, only one bond was deposited with the Farmers' Bank. That institution, therefore, was only agent of the payee for its collection. It had no authority to receive payment of the other bonds for him or on his account. Whatever it may have received from the obligors to be applied on the other bonds, it received as their agent, not as the agent of the obligee. If the notes have depreciated since in its possession, the loss must be adjusted between the bank and the depositors; it cannot fall upon the holder of the bonds.

But even as agent of the payee of the first bond, the bank was not authorized to receive in its payment depreciated notes of the banks of Virginia. The fact that those notes constituted the principal currency in which the ordinary transactions of business were conducted in Alexandria, cannot alter the law. The notes were not a legal tender for the debt, nor could they have been sold for the amount due in legal currency. The doctrine that bank bills are a good tender unless objected to at the time, on the ground that they are not money, only applies to current bills, which are redeemed at the counter of the bank on presentation, and pass at par value in business transactions at the place where offered. Notes not thus current at their par value, nor redeemable on presentation, are not a good tender to principal or agent, whether they are objected to at the time or not.

In *Ontario Bank* v. *Lightbody*, 13 Wend. 105, it was held that the payment of a check in the bill of a bank which had previously suspended was not a satisfaction of the debt, though the suspension was unknown by either of the parties, and the bill was current at the time, the court observing that the bills of banks could only be considered and treated as money so long as they are redeemed by the bank in specie.

That the power of a collecting agent by the general law is limited to receiving for the debt of his principal that which the law declares to be a legal tender, or which is by common consent con-

sidered and treated as money, and passes as such at par, is established by all the authorities. The only condition they impose upon the principal is, that he shall inform the debtor that he refuses to sanction the unauthorized transaction of his agent within a reasonable period after it is brought to his knowledge: Story on Prom. Notes, §§ 115, 389; *Graydon* v. *Patterson*, 13 Iowa 256; *Ward* v. *Evans*, 2 Ld. Raym. 930; *Howard* v. *Chapman*, 4 Carr. & Payne 508.

The objection that the bond did not draw interest pending the civil war is not tenable. The defendant, Ward, who purchased the land, was the principal debtor, and he resided within the lines of the Union forces, and the bonds were there payable. It is not necessary to consider here whether the rule that interest is not recoverable on debts between alien enemies during war of their respective countries, is applicable to debts between citizens of states in rebellion and citizens of states adhering to the National Government in the late civil war. That rule can only apply when the money is to be paid to the belligerent directly. When an agent appointed to receive the money resides within the same jurisdiction with the debtor, the latter cannot justify his refusal to pay the demand, and, of course, the interest which it bears. It does not follow that the agent, if he receives the money, will violate the law by remitting it to his alien principal. "The rule," says Mr. Justice WASHINGTON, in *Conn* v. *Penn*, 1 Peters C. C. R. 496, "can never apply in cases where a creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent there authorized to receive the debt, because the payment to such creditor or his agent could in no respect be construed into a violation of the duties imposed by a state of war upon the debtor. The payment in such cases is not made to an enemy, and it is no objection that the agent may possibly remit the money to his principal. If he should do so, the offence is imputable to him, and not to the person paying him the money;" *Denniston* v. *Imbrie*, 4 Wash. C. C. 395. Nor can the rule apply when one of several joint debtors resides within the same country with the creditor, or with the known agent of the creditor. It was so held in *Paul* v. *Christie*, 4 Harris & McHenry's Rep. 161.

Here the principal debtor resided, and the agent of the creditor for the collection of the first bond was situated within the Federal lines and jurisdiction. No rule respecting intercourse with the

enemy could apply as between Marbury, the cashier of the bank at Alexandria, and Ward, the principal debtor residing at the same place.

The principal debtor being within the Union lines, could have protected himself against the running of interest on the other two bonds, by attending on their maturity at the bank, where they were made payable, with the funds necessary to pay them. If the creditor within the Confederate lines had not in that event an agent present to receive payment and surrender the bonds, he would have lost the right to claim subsequent interest.

Judgment affirmed.

United States Circuit Court. District of Virginia.

EX PARTE CÆSAR GRIFFIN.

Where a person was regularly indicted, convicted, and sentenced under proceedings in a court of competent jurisdiction, the fact that the judge who presided at the trial and passed sentence was within the class prohibited from holding office by the Fourteenth Amendment to the Constitution of the United States, does not make the sentence a nullity nor entitle the prisoner to a discharge on *habeas corpus*.

The third section of the fourteenth amendment did not by its own direct and immediate effect, remove from office persons lawfully appointed or elected before its passage, though they may have been ineligible to hold such office under the prohibition of the amendment. Legislation by Congress was necessary to give effect to the prohibition by providing for removal.

The exercise of their official functions by these officers until removed in pursuance of such legislation is lawful and valid.

The government of Virginia formed at Wheeling by the loyal citizens of the state after the passage of the ordinance of secession by the convention at Richmond, having been recognised by the executive and legislative departments of the national government, must be treated by the courts of the United States as the lawful government of the state.

THIS was an appeal from an order of discharge from imprisonment made by the district judge, acting as a judge of the Circuit Court, upon a writ of *habeas corpus*, allowed upon the petition of Cæsar Griffin.

L. H. Chandler and *C. S. Bundy*, for petitioner.

Bradley T. Johnson and *James Neeson*, contrà.

CHASE, C. J.—The petition alleged unlawful restraint of the petitioner, in violation of the Constitution of the United States, by the sheriff of Rockbridge county, Virginia, in virtue of a pretended judg-